88-321 (1)

Supreme Court, U.S.
FILED
AUG 22 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

FLOYD H. DANIELS, and
KAY DANIELS,

Appellants and
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellees and
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, and
KAY DANIELS
4650 Coliseum Street, Apt. #1
Los Angeles, California 90016
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In Propria Persona

QUESTIONS PRESENTED

The questions presented for review, are as follows:

I. Did the Court of Appeals improperly deny Petitioners' "amended motion to dismiss the appeal as premature"?

II. Were Petitioners' "motion to dismiss the appeal as premature", a motion just like other motions before the Court of Appeals rule on the motion?

III. Does the "motion for reconsideration", pursuant to Rule 59(e) toll the running of the statute of limitation for filing a "Petition For Review", in the Court of Appeals?

IV. Can the Tax Court file a "Final Order", without entering a separate Order disposing Petitioners' "motion for reconsideration?

V. Reasons why questions presented are substantial and require plenary consideration.

PARTIES TO THE ACTION

1. FLOYD H. DANIELS, and

   KAY DANIELS, Petitioners herein.

2. COMMISSIONER OF INTERNAL REVENUE.

3. STEVEN PARK, Trial Attorney.
   Department Of Justice
   Tax Division
   Post Office Box 502
   Washington, D.C. 20044
   Telephone: (202) 633-3361

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

No. _____

FLOYD H. DANIELS, and
KAY DANIELS

Appellants and Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE

Appellee and Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioners, FLOYD H. DANIELS, and KAY DANIELS, petitions for a Writ of Certiorari to Review the Order of the United States Court of Appeals for the Ninth Circuit, filed on August 11, 1988, in which Petitioners' original "motion to dismiss the appeal as premature",

filed on June 24, 1987, be construed as a "petition for rehearing" of the Court of Appeals June 16, 1987 Order sumarily affirming the Order of the Tax Court. "So construed, the petition is denied".

OPINIONS BELOW

The Order of the Court of Appeals filed August 11, 1988, is reproduced in Appendix A.

The Order of the Court of Appeals, filed June 18, 1987, is reproduced in Appendix B.

The Order on the Tax Court, filed November 12, 1986, is reproduced in Appendix C.

JURISDICTION

The Order of the Court of Appeals was filed on August 11, 1988. (See Appendix A.) This Petition for a Writ of

Certiorari is filed within ninety days of that date. (28 U.S.C., Section 210(c).) The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

STATUTORY OR CONSTITUTIONAL PROVISIONS INVOLVED

The principal Constitution provision is the Fourteenth Amendment of the United States Constitution. Also, addressed are the proper application of Fed. R. P. 4(a)4, Fed. R. Civ. 58, 59(e), and 79(a). Also, Rule 15(b), and (d); and Rule 41(b)(1) and (d), Rules of Practice & Procedure of the Tax Court.

STATEMENT OF CASE

The Motions that were filed in the Tax Court on June 9, 1986, were denied by the Tax Court on June 16, 1988.

Within ten (10) days of June 16, 1986, Petitioners filed valid, and timely

"motion for reconsideration of the motions that were denied by this Tax Court on June 16, 1986". in the Tax Court on June 25, 1986, pursuant to Rule 59(e). Appendix D.

The Tax Court filed an Order on November 12, 1986, without entering a separate Order disposing Petitioners' "motion for reconsideration".

Petitioners filed a "notice of appeal" on November 24, 1986, from the Tax Court's Order, filed on November 12, 1986.

The Court of Appeals filed an Order Summarily affirming the Order of the Tax Court on June 16, 1987.

Within fifteen (15) days Petitioners filed a "motion to dismiss the appeal as premature", in the Court of Appeals, on June 24, 1987.

Petitioners filed in the Court of

Appeals, on July 25, 1988, a "motion for leave to file an amended motion to dismiss the appeal as premature", and an "amended motion to dismiss the appeal as premature".

The Court of Appeals, ruled that the original "motion to dismiss the appeal as premature", be construed as a "petition for a rehearing", instead of ruling that the "amended motion to dismiss the appeal as premature", be construed as a "petition for a rehearing", in the Court of Appeals' Order, filed on August 11, 1988. Appendix A.

Whereas Petitioners petition to this United States Supreme Court the denial of Petitioners' original "motion to dismiss the appeal as premature", construed as a "petition for a rehearing"; and denied.

ARGUMENT

Petitioners present the following argument in their behalf.

I.

DID THE COURT OF APPEALS IMPROPFRLY DENY PFTITIONERS' "AMENDED MOTION TO DISMISS THE APPEAL AS PREMATURE"?

The Court of Appeals filed an Order on June 18, 1987.

Within fifteen (15) days, on June 24, 1987, Petitioners filed a "motion to dismiss the appeal as premature", in the Court of Appeals.

On June 25, 1988, long before the Court of Appeals had ruled on the above stated motion, Petitioners filed a "motion for leave to file an amended motion to dismiss the appeal as premature", and "an amended motion to dismiss the appeal as premature", in the Court of Appeals, to

conform to the evidence.

Petitioners filed the above stated "motion for leave", and "amended motion", pursuant to Rule 41(b)(1) and (d), Rules of Practice & Procedure of the Tax Court.

Rule 41(b)(1).

> "(b) Amendments to Conform to Evidence:
> (1) Issues tried by Consent: When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as they had been raised in the pleadings. The Court, upon Motion of any Party at any time, may allow such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues".

Petitioners are requesting and asking that the Amended Pleadings be related to the Date of June 24, 1987, the date when Petitioners first submitted, and filed the Pleadings in the Court of Appeals.

In support of this:

> "41(d) Relation Back of Amendments: When an amendment of a pleading is permitted, it shall relate back to the time of filing that pleading, unless the Court shall order otherwise either on Motion of of a party, or on its own initiative."

Based upon the above, Petitioners have correctly, and timely filed the above stated "motion for leave", and "amended motion" in the Court of Appeals, on July 25, 1988.

When an "amended motion" is timely, and correctly filed in the courts, the "Amended Motion" takes precedence, and priority over the original Motion.

The Court of Appeals ruled that the original "motion to dismiss the appeal as premature", filed in the Court of Appeals on June 24, 1988, was construed as a "petition for rehearing, instead of ruling that the "amended motion to dismiss the appeal as premature", filed in the

Court of Appeals on July 25, 1988, was construed as a "petition for rehearing".

Based upon the above, the Court of Appeals improperly denied Petitioners' "amended motion to dismiss the appeal as premature", by the Court of Appeals' Order, filed on August 11, 1988. Appendix A.

Petitioners, also, filed other subsequent motions in the Court of Appeals, prior to the Court of Appeals' Order, filed on August 11, 1988, as follows:

1. "motion for leave to insert additional compensatory, punitive and exemplary damages to amended judgment, damages, and cost".

   "motion to insert additional compensatory, punitive and Exemplary damages to amended judgment, damages, and cost".

2. "motion for leave to file motion to compel the Internal Revenue Service to pay Appellants' 1986, and 1987 Years Tax Income Returns".

"motion to compel the Internal Revenue to pay Appellants' 1986, and 1987 Years Tax Returns".

3. "motion for leave to file motion for the Clerk of the United States Tax Court to submit supplementary docketing sheets, and supplementary motions to this United States Court of Appeals for the Ninth Circuit.

"motion for the Clerk of the United States Tax Court to submit supplementary docketing sheets and supplementary motions to this United States Court of Appeals for the Ninth Circuit".

Petitioners, hereby, request, and ask this Supreme Court to have the Clerk of the United States Court of Appeals for the Ninth Circuit, to submit the above stated, and quoted motions, including the "motion for leave", and "amended Motion", filed in the Court of Appeals on July 25, 1988, whereby justice can be rendered fairly in this "petition for review", in this Action.

II.

WERE PETITIONERS' "MOTION TO DISMISS THE APPEAL AS PREMATURE", A MOTION JUST LIKE OTHER MOTIONS BEFORE THE COURT OF APPEALS RULED ON THE MOTION?

The Court of Appeals filed an Order on June 18, 1987, as follows:

> "All of appellants' pending motions are denied. The decision of the Tax Court is summarily affirmed". United States v. Hooton, 693 F.2d 857 (9th Cir. 1982).

Within fifteen (15) days Petitioners filed a "motion to dismiss the appeal as premature", on June 24, 1987, in the Court of Appeals.

The Court of Appeal ruled in the Order, filed on August 11, 1988, as follows, in pertinent part:

> "Appellants' "motion to dismiss the appeal as premature', filed on June 24, 1988, is hereby construed as a petition for rehearing of the Court's June 16, 1987 Order summarily affirming the Tax Court".

However, Petitioners' "motion to dismiss the appeal as premature". was still a motion, and motions can be amended when the motions for leave, and the amended motions are filed in the Court of Appeals before the motions are litigated by the Court of appeals.

There is no place in Petitioners' "motion to dismiss the appeal as premature", have Petitioners stated that their motion be construed as a "petition for rehearing", filed on June 24, 1987.

Petitioners "motion to dismiss the appeal as premature", was just a motion until the Court of Appeals ruled on the motion on August 11, 1988.

Petitioners filed a "motion for leave to file an amended motion to dismiss the appeal as premature", and an "amended motion to dismiss the appeal as premature",

in the Court of Appeals, on July 25, 1988, long before the Court of Appeals' Order was filed on August 11, 1988.

Again, amended motions takes precedence, and priority over the original motions.

Based upon the above, Petitioners have been denied the "Equal Protection of the Law", without "Due Process of Law", secured by the 14th Amendment of the United States Constitution.

Also, this is an abuse of discretion by the Court of Appeals.

Based upon the above, it appear that the Court of Appeals have improperly denied Petitioners' above stated "motion for leave", and "amended motion", in the Court of Appeals' Order, filed August 11, 1988.

III.

DOES THE "MOTION FOR RECONSIDERATION" PURSUANT TO RULE 59(e) TOLL THE RUNNING OF THE STATUTE OF LIMITATION FOR FILING A "PETITION FOR REVIEW" IN THE COURT OF APPEALS?

The Motions that were filed in the Tax Court on June 9, 1986, were denied by Tax Court on June 16, 1986.

Within ten (10) of June 16, 1986, Petitioners filed a valid, and timely "motion for reconsideration of the motions that were denied by this Tax Court on June 16, 1986", in the Tax Court on June 25, 1986, pursuant to Rule 59(e). Appendix D.

Rule 59(e), states as follows:

"(e) Motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

The Motion were denied by the Tax

Court on June 16, 1986; and Petitioners filed their "Motion For Reconsideration" in the Tax Court on June 25, 1986, well within the above 10-day limitation period, prescribed by Rule 59(e).

Also, the valid, and timely "motion for reconsideration" was filed in the Tax Court on June 25, 1986, well within the 90-day period of July 9, 1986.

The 5th Circuit Court of Appeals, held:

> "A motion for reconsideration filed within the ten days of entry of the judgment is treated as a motion to alter or amend the judgment, which tolls the period of filing a notice of appeal."
>
> Fabin v. Reed, 707 F.2d 147 (5th Cir. 1983).

Based upon the above Court of Appeals, for the Fifth Circuit's Ruling, the above stated valid, and timely "motion for reconsideration", filed in

in the Tax Court on June 25, 1986, tolled the running of the statute of limitation for filing a "petition for review", in the Court of Appeals.

At no time was the above stated valid, and timely "motion for reconsideration" was returned to Petitioners, unfiled.

IV.

CAN THE TAX COURT FILE A "FINAL ORDER" WITHOUT ENTERING A SEPARATE ORDER DISPOSING PETITIONERS' "MOTION FOR RECONSIDERATION?

The above stated valid, and timely "motion for reconsideration" was before the Tax Court for reconsideration, when the Tax Court filed the ORDER, on November 12, 1986.

Petitioners filed a "Notice of Appeal", on November 24, 1986, from the Tax Court's ORDER, filed on November 12, 1986.

Based upon the above, when the Tax Court filed the Order on November 12, 1986; the Tax Court denied Petitioners above stated valid, and timely "motion for reconsideration", without entering an Order disposing Petitioners' "motion for reconsideration".

The Tax Court's Order, dated November 12, 1986, Appendix C, will reflect that no Order disposing of Petitioners' "motion for reconsideration" was entered in complaince with Fed. R. Civ. 58 and 79(a). Petitioners' appeal is therefore premature. Fed. R. App. P. 4(a)(4); Acosta v. Louisiana Dept. of Health and Human Resources, U.S. 106 S. Ct. 2786 (1986).

Petitioners are hereby respectfully requesting, and asking this Court to dismiss Petitioners' Appeal without prejudice to Petitioners' Right to file a "New Notice of Appeal", after

the Tax Court has entered a separate Order disposing of the "motion for reconsideration". No additional fees will be required of Petitioners for such an appeal. If Petitioners timely file a "new notice of appeal" prescribed by this Supreme Court's Order, the Clerk will establish a due date for Petitioners' brief.

In support of the above, this Supreme Court has Ruled, as follows, in pertinent part:

> "If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party ... under Rule 59, to alter or amend the judgment ... the time for appeal for all parties shall run from the entry of the order granting or denying any ... such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed with in the precribed time measured from the entry of the order disposing

of the motion as provided above."

Acosta v. Louisiana Dept. of Health and Human Resources, U.S. 106, S. Ct. 2876 (1986).

Based upon the above, the Tax Court can not file a "Final Order", without entering a separate Order disposing Petitioners' "motion for reconsideration".

Based upon the above, Petitioners, as United States Citizens, have been denied the "Equal Protection of the Law", without "Due Process of Law", secured by the 14th Amendment of the United States Constitution.

Also, based upon the above, this is an Abuse Of Decretion by the Tax Court.

V.

REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL AND REQUIRE PLENARY CONSIDERATION.

Petitioners have stated a Claim upon which relief can be granted.

Petitioners, as Citizens of these United States of America, have been denied the "Equal Protection of Law(Fed. R. App. P. 4(a)(4), Rule 58, 59(e), and 79(a)", without "Due Process of Law", secured by the 14th Amendment of the United States Constitution.

Abuse of Decretions have been committed by both, the Court of Appeals, and the Tax Court.

This Supreme Court has the Power, and Duty to Interpret, Uphold, and Protect the Constitution, and the Application of the Federal Laws of the United States, and Territories.

CONCLUSION

For the foregoing reasons, as stated in this "Petition For A Writ Of Certiorari", Petitioners respectfully request, and ask this United States

Supreme Court to reverse the Order of the Court of Appeals for the Ninth Circuit, filed on August 11, 1988; and the Order of the Tax Court, filed on November 12, 1986. Petitioners respectfully request, and ask this Court to grant the above stated, and quoted subsequent Motions, filed in the Court of Appeals, prior to the Court of Appeals' Order, filed on August 11, 1988. Petitioners respectfully request, and ask this Supreme Court to remand that the Tax Court filed and Order, and enter a separate Order disposing Petitioners' "motion for reconsideration", in compliance with Fed. R. Civ. 58, and 79(a), whereby Petitioners can file a "New Notice of Appeal", within the

designated time.

DATED: August 19, 1988

Respectfully Submitted,

FLOYD H. DANIELS, and

KAY DANIELS

In Propria Persona.

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

No. _____

FLOYD H. DANIFLS, and
KAY DANIELS

Appellants and Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee and Respondent.

APPFNDIX

A. ORDERS, AND RETURN RECEIPT

1. Court of Appeals' Final Order, filed August 11, 1988, Appendix A, Page 24.
2. Court of Appeals' Order, filed June 18, 1987. Appendix B. Page 26.
3. Tax Court's Order, filed November 12, 1986. Appendix C, Page 27
4. Return Receipt Notice. Page 29

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, et al., Petitioners-Appellants	)	
vs.	)	No. 86-7729
COMMISSIONER INTERNAL REVENUE SERVICE, Respondent-Appellee.	)	ORDER

Before: WALLACE, SCHROEDER, and BEEZER, Circuit Judges

Appellants' "motion to dismiss the appeal as premature," filed June 24, 1987, is hereby construed as a petition for rehearing of the court's June 16, 1987 order summarily affirming the Tax Court. So construed, the petition is denied. All motions filed subsequent to the petition for rehearing are denied as moot as filed in a closed case.

A certified copy of this order sent to the district court shall act as and

for the mandate of this court.

APPENDIX A

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, et al., Petitioners-Appellants	)	No. 86-7729
vs.	)	ORDER
COMMISSIONER INTERNAL REVENUE SERVICE, Respondent-Appellee	)	

Before: KENNEDY, ANDERSON AND CANBY, Circuit Judges

All of appellants' pending motions are denied. The decision of the tax court is summarily affirmed.

United States v. Hooton, 693 F.2d 857 (9th Cir. 1982).

APPENDIX B

APPENDIX C

UNITED STATES TAX COURT
Washington, D.C. 20217

FLOYD H. DANIELS, and KAY DANIELS Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	No. 27312-84

O R D E R

Petitioners have mailed to the Court for filing, and the Court has received on November 10, 1986, six motion covering various frivolous matters. The decision of the Court in the case was entered on April 10, 1986. No Notice of Appeal having been filed, the Court's decision became final on July 9, 1986, pursuant to Section 7483 of the Internal Revenue Code of 1954. Petitioners have from time to time mailed to the Court numerous motions, all of which have been frivolous and all of which have been denied or returned to petitioners unfiled. Premises considered, it is

ORDERED that the Clerk of the Court shall not file and shall discard the six motions received from petitioners on November 10, 1986, and shall not file and shall discard any future motions or other documents received from petitioner in

regard to this matter.

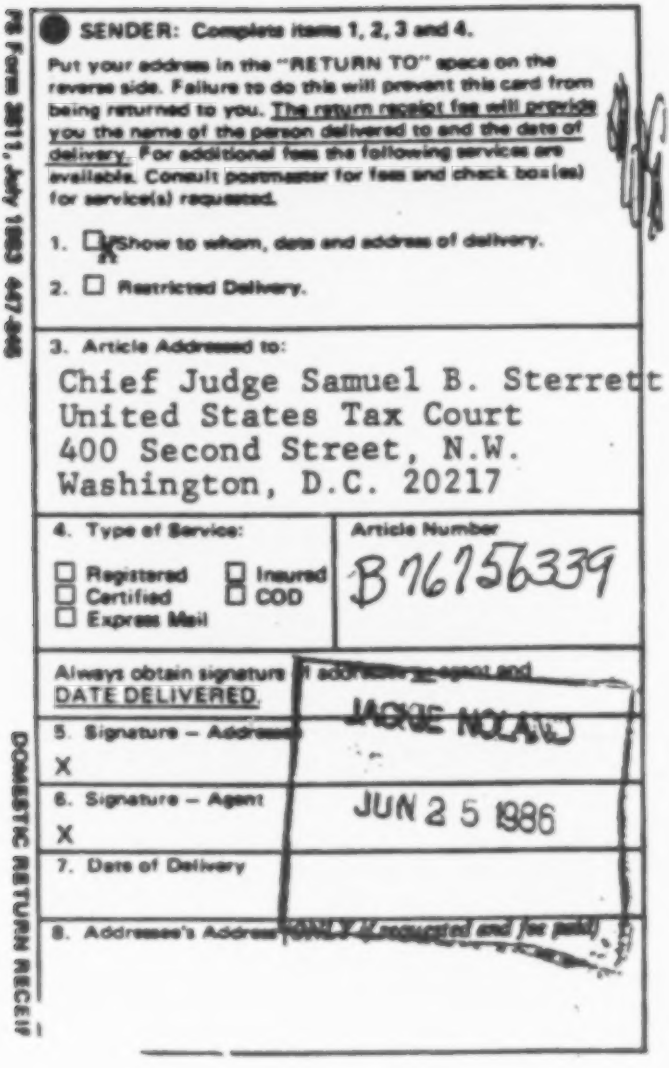
(Signed) ARTHUR L. NIMS, III

Arthur L. Nims, III
Judge

Dated: Washington, D. C.
November 12, 1986

APPENDIX C

APPENDIX D



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3. Article Addressed to:

Chief Judge Samuel B. Sterrett
United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217

4. Type of Service:
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☐ Certified ☐ COD
☐ Express Mail

Article Number
B 16756339

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X JACKIE NOLAN

6. Signature – Agent
X

7. Date of Delivery
JUN 25 1986

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

Return Receipt for "motion for reconsideration", APPENDIX D